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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,794	01/16/2004	Ari J. Stangler	42973.8001.US00	8278
34055	7590	06/29/2006		
PERKINS COIE LLP POST OFFICE BOX 1208 SEATTLE, WA 98111-1208			EXAMINER AMERSON, LORI BAKER	
			ART UNIT 3764	PAPER NUMBER

DATE MAILED: 06/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/759,794

Applicant(s)

STANGLER, ARI J.

Examiner

L. Amerson

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8,10-14,16 and 18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8,10-14,16 and 18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **Response to Argument**

1. Applicant's arguments with respect to claims 1-8, 10-14, 16, 18 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

a. Claims 1-3, 8 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Edelson in view of Morrell. Edelson discloses a wedge base having a pillow, cover and handle attached to the cover and a front and back surface. Including a pocket on the cover, a zipper and where the base and pillow comprise foam. Edelson does not disclose the pillow base being attached on the front and back surface of the wedge base. Morrell teaches in Fig. 10 a pillow 42 attached on a front and back surface of a base. It would have been obvious to one having ordinary skill in the art at the time the invention was made to rearranging the positioning of the pillow to accommodate a more comfortable position for a user while exercising.

b. Claims 1, 3, 6-8, 10 and 13-14, 16, 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bowman in view of Edelson and Morrell. Bowman discloses all of the limitations of the claimed invention including the front surface

of the base extending at an angle of 25-55 degrees (col. 4, line 1) where the range of the angle is 30 to 45 degrees and the width of the pillow is less than the base and the base has a substantially triangular cross section shape but Bowman does not disclose handles attached to the cover. Thus Edelson teaches handles. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Bowman in view of the teaching of Edelson such that handles are capable of providing ease of transport for a device. Regarding the ratios, Furthermore, absent a teaching as to criticality that the ratio to height and length be 1.5 to 1 to 3:1, this particular agreement is deemed to be known by those skilled in the art since the instant application and evidence of record fail to attribute any significance (novel or unexpected results) to a particular arrangement. In re Kuhle, 526 F.2d 553, 555, 188 USPQ 7,9 (CCPA 1975). Morrell teaches in Fig. 10 a pillow 42 attached on a front and back surface of a base. It would have been obvious to one having ordinary skill in the art at the time the invention was made to rearranging the positioning of the pillow to accommodate a more comfortable position for a user while exercising.

c. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Edelson and Morrell as applied to claim 1 above in view of Durham et al. Edelson discloses all of the limitations of the claimed invention except for the second foam comprising memory foam. Durham et al teaches memory foam. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Edelson in view of the teaching of Durham et al such that

memory foam adheres to the contour of a users body for providing maximum comfort. Morrell teaches in Fig. 10 a pillow 42 attached on a front and back surface of a base. It would have been obvious to one having ordinary skill in the art at the time the invention was made to rearranging the positioning of the pillow to accommodate a more comfortable position for a user while exercising.

d. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Edelson and Morrell as applied to claim 1 above in view of Kim. Edelson discloses all of the limitations of the claimed invention except for a spandex cover. Kim teaches a spandex cover. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Edelson in view of the teaching of Kim such that a spandex cover is capable of stretching across the entire pillow for coverage and comfort to the user. Morrell teaches in Fig. 10 a pillow 42 attached on a front and back surface of a base. It would have been obvious to one having ordinary skill in the art at the time the invention was made to rearranging the positioning of the pillow to accommodate a more comfortable position for a user while exercising.

e. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bowman and Edelson, Morrell as applied to claim 8 above and further in view of Zheng and Chambers. Zheng teaches the cover comprising Nylon [0028] and Chambers teaches the pillow comprising Lycra [0037]. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Edelson in view of the teachings of Zheng and Chambers such that a

nylon and lycra provide additional comfort and flexibility to a user while resting on a pillow. Morrell teaches in Fig. 10 a pillow 42 attached on a front and back surface of a base. It would have been obvious to one having ordinary skill in the art at the time the invention was made to rearranging the positioning of the pillow to accommodate a more comfortable position for a user while exercising.

### ***Conclusion***

3. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to L Amerson whose telephone number is (571) 272-4971. The examiner can normally be reached on Mon.-Fri from 9-6 p.m. Interviews Tue. and Thur..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
LORI AMERSON  
PRIMARY EXAMINER